

Union Packing Co. and United Food and Commercial Workers, AFL-CIO, Local 216A. Case 17-CA-9655

February 25, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER

On August 24, 1981, Administrative Law Judge James M. Kennedy issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Union Packing Co., Omaha, Nebraska, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

Substitute the following for paragraphs 1(c):

"(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act."

¹ The Charging Party has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge: This case was heard before me in Omaha, Nebraska, on January 13-15 and February 24, 1981, pursuant to a complaint issued by the Regional Director for Region 17 of

the National Labor Relations Board on June 22, 1980,¹ and which is based on a charge originally filed by United Food and Commercial Workers, AFL-CIO, Local 216A (herein called the Union), on May 12 and amended on June 18. The complaint alleges that Union Packing Co. (herein called Respondent) has engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act).

The issues presented are whether or not Respondent discharged two employees for their activities on behalf of the Union, assigned them and others to more onerous tasks because of such activities, otherwise interfered with employee rights by threatening them with reprisals, discharge, and more arduous jobs, and promised them benefits to coerce or dissuade them from unionizing.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits it is a Nebraska corporation engaged in the meat packing business and having a slaughterhouse located in Omaha. It further admits that during the past year, in the course and conduct of its business, it has purchased and received goods and services valued in excess of \$50,000 from suppliers outside Nebraska. Accordingly it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background and Participants

Respondent operates a beef slaughterhouse and packing facility in Omaha. The facility is reasonably modern and, typical of slaughterhouses, operates in a production line manner. Animals are killed, hooked by a hind leg to a moving chain, "stuck" in the blood pit to drain blood from the carotid artery, and then chain-carried through various work stations. Typically each work station involves a single employee who makes a single cut with either a straight or an air knife. An exception are those individuals who operate the hide pullers. They are required to make several cuts and to attach the hide to the device to remove it from the carcass. In addition, the organs of the animal's alimentary tract are graded by

¹ All dates herein refer to 1980 unless otherwise indicated.

United States Department of Agriculture inspectors and the edible ones are sent to the offal department while the inedible ones are sent to the rendering department. All of these operations occur on the kill floor. In addition to the departments previously mentioned, there are also the hide cellar and the cooler department.

The record is not clear how many employees Respondent actually employs each day, but it is at least several hundred. The plant manager is Jerry Brown. The kill floor foreman is Verlin "Alabama" Cox and his assistant is Guido Haase. Don "Doc" Delaware is the foreman of the hide department. His assistant is Dennis Piittmann; the leadman in the hide cellar is Arthur "Buck" Lyle. The offal department foreman is Elmer Branson. Other management associated individuals involved in the case are Carole Hansen, the personnel officer/insurance coordinator, and Johnnie Patterson, the processed meat salesman, formerly the offal foreman. Hansen's workplace was in the main office next to Brown's and Corporate Vice President George Schueman. In actuality Brown had little use for an office for he has difficulty reading and writing; instead, he is most often found in and around the plant premises. Most of the operational paperwork occurs in Schueman's office. At the time in question Patterson occupied an open area near the kill floor where he was commonly visited by employees on their breaks because of the free coffee he offered.

Although the incidents to be described occurred in 1980, the Union's organizing began in April 1979. It was a slow campaign and the Union did not file its election petition until February 1980. An election was conducted on April 11. Another labor organization intervened in the election and obtained enough votes so that a runoff was required, although the intervenor was eliminated. The runoff election is currently blocked by the instant unfair labor practice proceeding.

The employees whom the General Counsel alleges have been discriminated against were all kill floor employees. Elmer Pruett was a tail cutter; Bill Camerlinck was a hide puller; Clifford Little was a rumper (he skinned that area of the carcass); Dennis Stiles was a belly ripper or crotcher; and Jose Martinez was an ent-trail separator.

B. The Union Activity of the Alleged Discriminatees

Each of the alleged discriminatees, Pruett, Camerlinck, Little, Stiles, and Martinez, testified they attended five or six union meetings, at which they spoke to other employees regarding the benefits of unionization, and, except for Martinez, wore union stickers on their helmets during the week or 10 days before the April 11 election. Martinez was one of the Union's observers during the election. It does not appear that any of these individuals was in the forefront of the Union's organizing; there is no testimony that they were involved in card solicitation or held any union leadership positions during the organizing drive. According to Skip Niederdeppe, the Union's professional organizer, approximately 160 employees signed authorization cards. It also appears that during the week or 10 days before the election a large number of employees wore union stickers on their helmets and pasted them on their lockers. In fact, according to Plant Manager

Brown, he even wore a sticker on his helmet for a short time 1 day. Furthermore, the record shows that 127 employees voted for the Union in the April election.

C. Alleged Interference, Restraint, and Coercion

The complaint alleges that Respondent, through various supervisors and/or agents, engaged in a variety of independent violations of Section 8(a)(1) of the Act. The principal actors in this alleged misconduct are Plant Manager Jerry Brown, Assistant Kill Floor Foreman Guido Haase, and salesman Johnnie Patterson. For organizational purposes, I shall deal with the allegations against the supposed wrongdoers.

Jerry Brown

1. Paragraphs 5(c) and (d) of the complaint allege that on January 8 Jerry Brown interrogated employees regarding their union activities and threatened employees with reprisals if they supported the Union and repeated similar threats sometime in February.

There are two incidents on which the General Counsel relies. The first involves employee Louis Newcomber and the second involves Newcomber and alleged discriminatee Bill Camerlinck.

Newcomber has been employed by Respondent for 17 years and currently works on the hide puller. He testified that on January 8 he happened to be in the electrical circuit room when Manager Brown came in and told him he had heard Newcomber "was getting the guys all up in the air talking about our benefits." Newcomber responded that a lot of employees had been complaining about benefits and asserted that employees were losing money because of inflation. Brown replied, "Well, everyone [is] suffering from inflation," but continued, telling Newcomber to stop "getting the guys up in the air talking about the benefits." Newcomber also said that Brown told him that he had heard Newcomber was "the one writing Union letters." Newcomber, after hesitating, said that there were a lot of employees involved in that. Brown commented he did not think Newcomber would have been doing something like that.

Brown's version is different. He said Insurance Coordinator Carole Hansen had reported that Newcomber was "hassling" her on some insurance claims. She asked him to talk to Newcomber to ask him to stop. Brown said it was his understanding, through Hansen, that Newcomber was asking for preferential treatment of his claims and asserting everyone else's claims should be dropped and his should be paid. Accordingly, he told Newcomber to stop "raising so much sand" with Hansen. "She's getting it done the best she can. Just give her some time . . . leave her alone." He denies saying anything to Newcomber during that conversation regarding Newcomber being the individual authoring union letters. He says he did not know Newcomber was doing so, and never in any way discussed with Newcomber the fact that he was for the Union.

Sometime in February, according to Newcomber, he was walking through the main office to Hansen's office to "do some insurance work" and he remembers that Brown saw him and said, "You better hope that the

Union gets in." After completing his business with Hansen, he was returning through the office, having been joined by Camerlinck. Brown, Foreman "Alabama" Cox and some other "bluehats"² were in the office frying hamburgers on an electric skillet. Camerlinck remarked that the hamburgers smelled good. Brown turned to the others saying, "There goes another one of them fucking Union scabs." Camerlinck asked him to repeat the statement and Brown did so. Then Brown told him, "Get the fuck out of here before I get mad." Newcomber, with less detail, testified consistently with Camerlinck.

Brown denied referring to any employee as a "fucking Union scab" and also denied telling Camerlinck to get out before he became angry. Later he observed that he had no idea what the phrase "Union scab" meant as he had always thought scabs were nonunion individuals who crossed picket lines.

As noted, the complaint alleges these conversations to contain two elements: unlawful interrogation regarding an employees' union activities and a threat of reprisal for those activities. First, the relative credibility of the witnesses is a difficult question. Newcomber and Camerlinck are both still employed and are at risk for this testimony; thus it appears credible, except for the reference to union scabs, an unlikely phrase to be used by Brown or anybody. But Brown is a former Union member and, if now imbued with union animus, could have twisted the phrase to Respondent's advantage. Yet, on the stand he seemed genuinely puzzled by the phrase. Neither he, nor I for that matter, had ever heard it before.

Furthermore, there is real doubt regarding the legal significance of the phrase. If it occurred as Newcomber and Camerlinck say, no doubt it was intended as a scornful remark—but would it restrain or coerce anyone in the exercise of their Section 7 rights? The phrase "get out" of the office before the manager "got mad" may have raised some fear in the recipient's mind, but of what? Keeping in mind that the plant employees regularly use coarse language, barnyard humor and *macho* posturing, in that context the threat, unclear at the outset, loses even that magnitude. Taken with Brown's credible denial, I recommend that the reprisal threat be dismissed.

With regard to Brown's denying questioning Newcomber regarding his having authored some union literature, however, I am less persuaded. There is no evidence that Newcomber was unduly harassing Hansen or asking for preferential treatment of his claims. She was a witness, but was never asked about the matter. There is, therefore, substantial doubt that Brown was attempting to alleviate a problem between herself and Newcomber. On balance, I conclude that Brown's question constituted an unlawful inquiry into Newcomber's union activity and so find.³

² Individuals who wear blue hats are either supervision or utility workers who spell line employees who need to leave the line temporarily.

³ In assessing the 8(a)(3) allegations of unlawful discharge and onerous work transfers, I have considered the fact that known union activist Newcomber did not suffer like treatment. That tends to weaken the General Counsel's case in regard to those matters.

2. Paragraph 5(b) of the complaint alleges that on March 11 Brown promised Camerlinck a benefit to dissuade him from supporting the Union. In support of this allegation Camerlinck testified that about a month before the election he happened to be in Johnnie Patterson's office with Patterson and several others. Camerlinck had just arrived and had missed part of the conversation but Brown asked him, "What do you think of that?" Camerlinck asked what he was talking about and Brown told him there was a rumor that the Company was going to begin "gang time" and asked Camerlinck what he thought of gang time.⁴ Camerlinck understood that before the gang time bonus was to be paid the crew would have to process 2,200 beef in 8 hours or 2,750 beef in 10 hours. He thought working that many carcasses in six 10-hour days would be too much and told Brown so. Brown needled him saying Camerlinck was "too soft and wasn't used to hard work." On the following day Camerlinck was taken off the hide puller and asked to rump for a day. He had been a rumper 2 years previously, but did not particularly care for the job. That evening he mentioned to Cox that his arms and wrists were sore. The next day he says Brown heard about his soreness and laughed at him, telling him that he had been "crying the day before about having to work hard." Camerlinck responded by saying that he had not been crying, but just mentioned that his wrists were sore. Again, Brown said, "You are just too soft, and you just cried all day," laughing at Camerlinck for having to work "for a change." Camerlinck replied he could work Brown "to his knees any day."

With regard to this entire exchange, it appears significant that at no time did Brown mention the Union to Camerlinck. It is true that the election petition had been filed several weeks before and it can be supposed that Brown and most of the employees were aware of it. Nonetheless, I am unable to find, even crediting Camerlinck's version, that the incident violated the Act as a promise of benefit designed to dissuade Camerlinck or other employees from supporting the Union. Gang time appears to have been a practice followed by the Company in the past and Camerlinck, a 15-year employee, was well familiar with it. Therefore, Camerlinck was not likely to and did not view the gang time bonus as a benefit: he thought it would involve more work. Second, Brown did not in any way tie gang time to the union representation question.

For the purpose of analyzing the legality of Brown's statement, I shall assume that Camerlinck's testimony is reliable. Even so, I am unable to find that the conduct violated the Act. See *Wilhow Corporation d/b/a Town & Country Supermarkets*, 244 NLRB 303, 307-308 (1979) (Davis/Robinson conversation), and at 309 (wage increase matter). The case is replete with union animus of such severity as to require a bargaining order under *N.L.R.B. v. Gissel Packing Co.*⁵ Yet, the Board upheld

⁴ Camerlinck knew from past experience that gang time was a bonus to be paid all members of the gang, i.e., the kill floor personnel, if they processed a certain quota of beef carcasses.

⁵ 395 U.S. 575 (1969).

the Administrative Law Judge's dismissal of two incidents similar to those occurring here. The first incident occurred a week after the union demanded recognition. It allegedly constituted unlawful interrogation and a threat of discharge for union activity. The supervisor asked the employee "What was going on?" When the employee replied he did not know, their conversation turned to the employee's plan to build a house. The supervisor asked, "You'll need a job, won't you?" and after they talked some more, the supervisor again remarked, "Well, you'll need a job to make payments on that." The Administrative Law Judge dismissed the allegation because the question was not directed at learning about the employee's union activity or sentiment or the union activity of any others. He therefore found that there was no interrogation involved and the supervisor's observation about the requirement of a job was only an innocuous response to remarks about contemplated expenditures of money, not a subtle threat of job loss. In the second incident the judge discussed a wage increase which became effective after the union's demand. He held there that the proof did not satisfy the Supreme Court's *N.L.R.B. v. Exchange Parts Co.*,⁶ test that the wage increase must be for the "express purpose" of inducing employees to reject the union. Even though the company had already expressed animus against the union organizing at that point, the Administrative Law Judge nonetheless held that such conduct had not been shown to be for the prohibited purpose. One of the factors he relied on was the absence of a union organizing nexus to the granting of the increase, particularly evidence of timing.

Likewise, Brown's question to Camerlinck regarding what he thought of gang time was devoid of any reference to union organizing, even though the petition was on file. While the timing is somewhat suspicious, the union animus is far less here than in *Town & Country Supermarkets*, *supra*. Moreover, there are no doubt daily conversations about possible job changes and job conditions, all of which are perfectly innocent. I conclude this to be one. I reach this conclusion despite the fact that union animus may be found elsewhere in this record. Certainly in *Town & Country Supermarkets*, the suggestion of a job loss or a wage increase would have been serious matters if connected, even indirectly, to union organizing. But they were not so connected and no violations was found by either the Administrative Law Judge or the Board. Likewise there is no proof that Brown's question to Camerlinck, or the 1-day rumping job, was connected to union organizing; accordingly, the same result obtains and the allegation must be regarded as unproven. I therefore recommend that this allegation be dismissed.

3. Paragraph 5(e) of the complaint alleges that on May 9 Brown threatened employees with more arduous working conditions because of their support for the Union. To sustain this allegation the General Counsel relies on the testimony of crotcher Dennis Stiles. Stiles testified that on May 9 he was on his way to Carole Hansen's office to discuss an insurance matter. While in the office area

he ran into Brown who was going the other way. Stiles excused himself as they passed; he recalls after that occurred, Brown said, "Well, there's another man that's going to be down in rendering." Contrary to Respondent's brief, the record does not reflect that Brown denied the conversation. However, Brown did say that the day before Stiles was discharged (i.e., May 9) Foreman Cox had "called down" Stiles for throwing water on another individual.

In view of the vague nature of Stiles' testimony, his minimal union activity, and the fact that the election had been conducted nearly a month before, albeit still inconclusive, and the fact that the remark is not even indirectly connected to any union activity or beliefs by Stiles, I am unable to find a violation here. I recommend that it be dismissed.

Also on May 9, and alleged to be in support of this allegation, is the testimony of Elmer Pruett. Pruett, normally a tail cutter, had been training on a new job, the "chuck" or "lower" saw, with Walter Czerwinski. At break time, Pruett went to Patterson's desk for coffee. He says he was covered with blood, sweat, and bone chips. He was exhausted. Brown looked at him and laughed. According to Pruett, Brown then told Newcomber, who was standing nearby, that Newcomber was "next." Newcomber does not corroborate Pruett. He says he was too far away and did not hear what was said. Brown did not testify about this incident.

Once again, there does not seem to be any connection to the union organizing drive regarding this incident. First of all, laughing at Pruett, while it may constitute rough humor, typical of Brown and the plant generally, carried no antiunion suggestion. Second, Pruett's claim that Brown threatened Newcomber is not corroborated by the direct victim, Newcomber himself. Thirdly, as will be seen, Pruett's credibility is subject to great doubt. Accordingly, I conclude that this allegation has not been proven either. Thus, that portion of paragraph 5(e) of the complaint dealing with Brown's May 9 conduct be dismissed.

Johnnie Patterson

As noted, Johnnie Patterson is a processed meat salesman who was formerly the offal foreman. Paragraph 5(a) of the complaint alleges that he threatened employees with discharge on several occasions between February and April 11. In fact there is only one incident in the record which arguably fits the allegation. That occurred on February 16. On February 11 a memo was issued by one Larry Horbach, whose position is not shown in this record but who appears to be a management official. The memo was sent to "all foremen" advising them that on Friday, February 15, Horbach would conduct an unemployment compensation procedures workshop. Patterson received a copy of the memo but did not attend because he was not a foreman. He says on the following day, February 16, when he went to work he found on his desk copies of some material used in the workshop, including a "notice of warning" form which was new. That form is part of the material in evidence as Respondent Exhibit 1.

⁶ 375 U.S. 405 at 409 (1965).

Patterson was reviewing the material when a break occurred and he was visited by Camerlinck, Newcomber, and perhaps other employees as was their custom. Those two testified that the incident occurred approximately 2 weeks before the April 11 election. There is, therefore, a nearly 6-week discrepancy regarding the timing of the incident, yet all three seem to be referring to the same conversation. Due to the documentary evidence I find February 16 is the date of the conversation.

Camerlinck and Newcomber say Patterson had some papers on his desk. When Camerlinck looked at it, Patterson told him it was "a write-up sheet" containing "things that you could get fired for, if the union got in, these were things that they had to write you up for, such as insubordination, being late, improper dress." Camerlinck testified Patterson told him he had attended a company meeting with "the Labor Relations Board man the night before" to find out where they stood with "the Labor Relations Board, what they could, what the rules were, I can't remember exactly." Camerlinck said that Patterson "indicated to us that if the Union got in the company had to use this paper and had to write us up and that if an employee had two or more write ups, he was discharged."

Newcomber testified that the discussion occurred about a month before the election and Patterson told the group that "over the weekend, the Labor Board had come in and were showing films and were telling the company the rights they had." Newcomber says Patterson remarked that "if the union came in, it would be a lot easier to fire [you] guys, because for being late, if you were late, or if you had a bad attitude, or wore the wrong clothes, this was some of the things that he said were on this paper. And if we got the union in, it would be a lot easier to fire us than it is now." Newcomber says Patterson did not show him the paper, but is sure Patterson used the words "National Labor Relations Board." He denies that there was any reference to unemployment compensation matters. Camerlinck, too, is certain that Patterson mentioned the National Labor Relations Board.

Patterson denies mentioning the National Labor Relations Board and says he was discussing the unemployment compensation material and the new warning slip enclosed with them. He recalls being very angry with the new form because it meant that things would be tougher for employees than they had been before. His testimony: "Well, I was sitting at my desk reading over it and some of the things that it lists here that you can fire people for and I never saw anything like this before. The way it appeared, you can read almost anything into it . . . I looked at the paper and I was reading it, and according to this, you can get fired for almost anything and still, I asked them, I said, if this is some of the clauses in here that you can get fired for, what do you need a union for? I mean, what can a union do for you, that is what I said." On further examination he said that the Company's policy toward the transgressions listed on the warning slip had, until then, been tolerant. He said he was thinking out loud and since the employees were seeking a union for protection, he thought, in a confused way, that the Union would do them no good.

Frankly, I found Patterson's testimony to be very confusing and disoriented. He conceded that the Union had done nothing whatsoever to give him his idea. Even so, I am not convinced that he mentioned the National Labor Relations Board to the employees. This arose out of an unemployment compensation workshop and, if anything, he was referring to the materials generated by it. The employees' evidence to the contrary is rejected. Nonetheless, I conclude that Patterson's remarks could reasonably be taken by employees as a statement that unionization would result in increased discipline of employees for matters which had long been tolerated, particularly attendance, insubordination, carelessness, attitude, performance, and dress.⁷ I conclude therefore that Patterson, admitted to be Respondent's agent,⁸ violated Section 8(a)(1) of the Act by implying that unionization would result in stricter rule enforcement, including discipline which could lead to discharge. This is not to say, however, that Patterson was in fact speaking management's mind. I have no doubt that Patterson was as confused in that office as he was before me.

Guido Haase

According to the remaining portion of paragraph 5(e) on May 6 Assistant Kill Floor Foreman Guido Haase threatened employees with more arduous working conditions because of their union activities. In support of that allegation the General Counsel relies on the testimony of Elmer Pruett. Pruett testified that at 6 a.m. he had just arrived on the kill floor and was at the drinking fountain. Haase approached him and told him: "One of [your] union brothers [is] in the blood pit. It is just starting, baby, and you are next. On that morning rumper Cliff Little had been asked to replace Sonny Prue in the blood pit. Haase recalls that at one point he and a bunch of fellows were standing around on a break and someone told Pruett, "Your union brother is in the blood pit and you are next." He denies making the statement himself saying he does not know who made it, but it was one of the employees in the group. He said nothing to Pruett after the remark was made. This incident will be discussed more fully in the section dealing with Little and Camerlinck, although it preceded Pruett's own discharge by only a week.

D. The Discharge of Elmer Pruett

Elmer Pruett was originally hired in August 1966. He was discharged in mid-May 1980. Prior to his May discharge on February 19 he suffered a temporary loss of employment. Since Respondent had opened its new plant in 1979, Pruett had principally been assigned as a tail cutter on the kill floor, one of the lesser paying jobs. He has, over the years, requested higher paying jobs. His success regarding those efforts will be discussed below.

As noted *supra* there is evidence that Pruett attended four or five union meetings, signed an authorization card,

⁷ Offenses listed on the new warning slip.

⁸ Respondent's answer admits him to be both a supervisor and an agent; however, the testimony shows that he does not engage in direct supervision of any employees.

and, shortly before the April 11 election, wore a union sticker on his helmet and put one on his locker door.⁹ Aside from that, however, his union activity is minimal. He was not a leader in the union movement and there is no evidence that Respondent thought he was. He was a longtime friend of Plant Manager Brown, even suffering from the same inability to read and write. Early in their employment, those two, as well as a number of other employees, were part of a motorcycle club. Brown rose to become plant manager while Pruett remained in lower paying jobs.

On February 19, Pruett came to work suffering from loose bowels. He told Assistant Foreman Haase that he might need to be spelled due to his infirmity. Shortly before the 11 a.m. break, he asked utility man Lupe Perales to fill in for him. Pruett says Perales refused to do so as he was squeegeeing the blood pit. Pruett told him he had to go to the bathroom but Perales told him Brown had told him no. Pruett did not ask any of the other utility men, one of whom was nearby.¹⁰ Instead, he went to the bathroom, and while he was gone, a number of carcasses passed through untailed. During the 11 a.m. break which followed a few minutes later Pruett says Brown took him to the office. Pruett testified Brown told him he "had too big of a mouth for the Union" and he was going to fire Pruett, and Pruett would not be around to vote in the election. He claims Brown then told him he was being fired because he did not have a utility man to take his place, but he knew "the real reason why."

Brown testified that he discharged Pruett because he had walked off the job. He said he learned from utility man Ignacio Cano that Pruett had walked away. He says he caught Pruett in the hallway near the bathroom and asked him what he was doing. Pruett told him he had to go to the bathroom whereupon Brown remarked, "You only have about 15 to 20 cattle to go, couldn't you wait till then?" Brown says Pruett said, "No, I have to go right now. I asked Lupe but he kept on squeegeeing." Brown told him, "You just can't walk off your job. And now we've gotten this split on all these cattle from the tails not being cut off." Brown says both men got a little angry so he told Pruett, "I just don't need you no more."

Brown also testified that Pruett had, over the years, left his job before "lots of times." He recalled one incident which occurred nearly 10 years before where he and several others rode motorcycles over to Pruett's home and asked him to return to work. He was unable to recite with specificity the other occasions, but I have no doubt that his testimony is reasonably accurate, considering Pruett's conduct here.

In any event, after being told to leave, Pruett went to the union hall to tell organizer Niederdeppe what had occurred. Niederdeppe caused an unfair labor practice charge to be filed, Case 17-CA-9469, on February 22. The charge was not received by Respondent until February 23.

However, on February 20, the day after Pruett's discharge, Brown telephoned Pruett and asked him to come back to work. Pruett says Brown asked him to admit he

had been wrong for having gone to the bathroom but he refused to do so. Even so, Brown asked him to return. On February 21 Pruett returned. Brown says he asked Pruett to return after some employees interceded on Pruett's relationship. Brown says he accepted that argument and called Pruett back.

Later, after Pruett returned to work, Corporate Vice President George Schueman spoke to Pruett about the Union's unfair labor practice charge. Pruett said Schueman apologized for Brown's action, told Pruett that he had instructed Brown to leave him alone, during the organizational drive, and told him that, if he had any other problems with Brown, Pruett should come and see him. Pruett also says Schueman asked him to sign a paper to withdraw the charge. Pruett told him that it was not necessary; indeed the Union was already in the process of withdrawing it.

Pruett continued to work as a tail cutter during the next few months. He testified that, on three or four occasions prior to the election, Brown told him to "back away from the Union or be fired," also saying he "better not vote for the Union" because if he did he would have trouble finding another job because he could not read or write. Brown denies the statements altogether.

On election day, according to Pruett, Brown followed him to Patterson's office for coffee. Brown asked Pruett if he had voted yet and Pruett replied that he had. According to Pruett, Brown then said, "Good. Now I can tell you what I think of you." Pruett says Brown called him "prick." Pruett replied in kind saying he did not have to tell Brown what he thought of him, Brown knew exactly what Pruett thought. Brown told Pruett, "I had orders from the front office to keep my hands off you until after the election, but I'm not going to fire you this time, I have several other dirty jobs lined up for you. I am going to make you sweat it." Pruett asked Patterson if he had heard what Brown had said. Pruett says Patterson claimed he had heard nothing and asked if he had any witnesses. Pruett went back to work.

For 3 weeks nothing further occurred. On May 6, Cliff Little was sent to the blood pit to replace the absent Sonny Prue and Assistant Foreman Haase allegedly made the remark discussed above in section C, *supra*.

On May 8 Haase told Pruett he had orders to take him off the tail cutting job and to put him on the lower saw. The lower saw operator, Walter Czerwinski, was assigned to train Pruett. According to Pruett, Haase told Pruett he had better stay with the lower saw job or he "would be through." He says Haase also told Czerwinski to "show me a couple of cuts and then go squeegee the floors and don't help [Pruett] no more, get lost."

Both Haase and Czerwinski deny Pruett's version. Haase recalls that Pruett had been asking for higher paying jobs so he and Brown discussed it and decided to put him on the chuck saw. He says he remembers telling Czerwinski to "stick with him" and teach Pruett how to saw cattle. He says he directed Czerwinski to watch Pruett but to clean up the floor in the immediate area. Pruett contends that Czerwinski did little if anything to train him on the chuck saw but instead hindered him by

⁹ He claims he was "the first" to wear the stickers.

¹⁰ See the testimony of utility man Ignacio Cano.

telling him to replace broken blades with used, rather than sharp ones.

Czerwinski is a 26-year employee of Respondent, is 63 years old and has handled the saw for several years. He says Haase told him to teach Pruett how to perform the saw job and denies that Haase told him to leave Pruett alone. He says he worked with Pruett for 2 days, often standing behind him to help guide the saw. He explained to Pruett that he should not push the saw so hard because that tends to break the blades. Czerwinski says that, although Pruett did well the first day, on the second he leaned on the saw too heavily and broke four blades. Czerwinski says on both days he often took over the saw and was never far from the saw area while squeegeeing, though at one point he walked down the chain while squeegeeing and signaled others that he was making "easy money." That, too, appears to be typical of the heavy humor seen in the plant. It is not evidence that Haase told him to leave Pruett untrained.

Pruett says that because of those 2 days on the chuck saw he became so exhausted he had to soak in hot water and have his wife give him rubdowns. He also claims Offal Foreman Elmer Branson came up to him once during that time and asked him how much longer he was going to be doing the saw job because his replacement on the tail job was losing too much usable product.

On the second day, at approximately 8:45 a.m. he was having coffee in Patterson's office, covered with blood, sweat, and chips. It was at that point he says Brown laughed at him and told Newcomer he was next. This incident is discussed above. About 10:30 a.m., Cox asked him how he was doing and he replied, "Just great, turn up the chain." About 15 minutes after that Haase pulled him off the job and sent him to Brown's office. Brown told him he was breaking too many saw blades and was afraid he was going to hurt himself. Therefore, Brown said, they were going to stick him in the hide cellar.

Brown says Pruett was training on the chuck saw at that time and was actually a spare man on the floor. He says he received a request from Hide Cellar Foreman Doc Delaware for additional help so he selected Pruett, the extra man, to help out in that department. Delaware and Piittmann corroborated Brown saying that a freight car had arrived and needed to be loaded that day. They had suffered some absences that morning and needed someone to help. Brown says Pruett's transfer was in "no way" permanent.

That day Pruett loaded the boxcar for a period of time but was removed from that task to assist in cleaning up a fat spill from one of the fleshing machines located in the hide cellar.¹¹ According to Pruett, the cleanup directive occurred just after he had told Delaware he was doing "just great" loading the boxcars. He said a few moments later Delaware told him and a Mexican to clean up the fat spill with their bare hands. Pruett resented working with his bare hands in this fashion, preferring a shovel, which was not allowed him. He claims that working with the fat was like working with "snot." Finally, he as-

serts that after he had worked with this distasteful material for some time, the fleshing machine "cleared itself."

Delaware testified that the machine did not clear itself, that a pump diaphragm had become jammed by a piece of hide, a not uncommon occurrence, and had to be disassembled to correct. Second, he points out that there are two types of fat which fleshing machines encounter, "stringy" and "loose." He says that a shovel simply does not work on the stringy type because it falls off. He also says that picking up stringy fat with one's bare hands is something that hide cellar employees are commonly required to do.

After the cleanup was completed, Pruett returned to the boxcar and loaded hides for the rest of the day.

On the next workday, the following Tuesday, Pruett reported to the kill floor but was told to return to the hide cellar. He says no explanation was given him for that change. As the boxcar had been loaded the previous day and an expected truck had not yet arrived, Pruett was assigned to "hook hides" over the "raceways."¹² Hooking is the easiest job in the hide cellar. The crew removing hides stands on a catwalk next to the raceway. One or more employees pull the hides to the surface of the water with a long pole. Another employee locates the hole in the hide and hands the hide to the hooker, hole first. The hooker grasps the hide and lifts it approximately a foot from the water and places the hole on the hook of a moving chain. The chain then drags the hide through the raceway to the wringer. The chain is uniformly level above all four raceways at the hooking point. However, several feet before it reaches the wringer, the chain turns up approximately two more feet before it enters the wringer.

Pruett says he was ordered by an unidentified bluehat to hook the hides at the point where the chain enters the wringer. He quickly determined that the job was too hard to do there and refused to perform it anymore. He told leadman Buck Lyle that it was too hard but Lyle told him he had been ordered to have Pruett work in this fashion.

Both Delaware and Lyle deny that any such order was given. Indeed, Lyle denies that Pruett was ever asked to hook hides at that end of the raceway, agreeing it would be too hard to do so. He says that, when Pruett told him the work was too hard, they were all standing at the opposite end of the raceway where the chain is the correct height.¹³ He never saw Pruett at the wringer end.

Pruett says he went to see Delaware to ask why he was being told to hook the hides at the wrong end of the vat. Pruett quotes Delaware as saying he had been told to have Pruett do it that way. When Pruett replied it could not be done, Delaware told him, "I can't use you no more." Pruett says they then went to Brown's office where Delaware spoke to Brown alone. When Brown

¹¹ A fleshing machine removes excess fat from fresh hides prior to their being placed in brine for curing.

¹² A raceway is a brine vat approximately 10 feet deep. There are four located in the hide cellar. Hides are cured in the raceways for 48 hours.

¹³ Pruett says the order was given him shortly after he observed Plant Manager Brown walking through the hide cellar. Brown and Delaware agree that Brown spoke to Delaware that morning in the hide cellar but credibly testified that Pruett was not the subject of their conversation.

came out of the office he told Pruett if he could not do the hide cellar job as far as he was concerned Pruett had quit. Pruett says he replied, "Then you are firing me?" Schueman then ran out of the office and asserted Pruett had quit. Pruett says he asked why he could not have his tail cutting job back. Schueman told him he was "missing too many beefs" and they had put him in the hide cellar to keep from firing him. Pruett challenged, "You mean you put me in the hide cellar to fire me."

Delaware and Brown's version of this altercation is quite different. Delaware says he simply had Lyle assign the hooking job to Pruett, telling Lyle, "Show him what to do." He said about 2 hours later Lyle came to him and told him Pruett had said the job was too hard for him. Lyle says he assigned Pruett the job of hooking hides at the proper point on the raceway and never moved Pruett from that spot. He remembers Pruett told him the job was too hard so he reported to Delaware that Pruett said he could not do the job. Pruett was not with them in the office so Lyle had to go get him. Lyle also testified that he does not think Pruett asked him who put him on the job and does not think that he gave any response to any such question. Lyle did not hear the conversation between Delaware and Pruett.

Brown testified that at some point that morning Delaware appeared at his office with Pruett saying that Pruett did not wish to work in the hide cellar any more. Delaware then left. Brown testified to the following conversation: "I said, 'What's the matter, Elmer?' He said, 'I ain't going to work in the hide cellar.' I said, 'Oh, you may work a couple of hours down there.' And he says, 'No, you're firing me' and I said, 'No, I ain't firing you, Elmer.' And we talked back and forth there for a little bit. And he said, 'You fired me.' I said, 'Elmer, I ain't firing you' . . . so he got mad and he stomped out and went home. I figured he'd be back the next day. Heck, he done it I don't know how many times and come back and next day."

Brown does not remember if Schueman said anything in that conversation but does recall Pruett asked to go back to cutting tails. He denies there was any conversation about Pruett being sent to the hide cellar to keep him from being fired. On cross-examination he says Pruett said nothing about the sort of work he had been required to do in the hide cellar saying only that he wanted to go back to the kill floor. Brown concedes that he asked Pruett, "Well, what if that's the only job I've got for you? . . . It could be." It was at that point he says Pruett accused him of firing him. Brown says he told Pruett he was not firing him, but Pruett "stomped out" as he had done 15 to 20 times in the past.

The General Counsel challenged Brown's testimony about 15 or 20 previous walkouts, and I think it is clear that Brown was exaggerating. But it is also clear that Pruett had indeed walked out on a number of occasions before.¹⁴ This time, however, Pruett did not return the next day.

¹⁴ See the testimony of Gene Feder, which corroborates Brown regarding the motorcycle incident.

With regard to the relative credibility between Pruett and Respondent's witnesses, while I have found Brown exaggerated on the number of times Pruett had walked away from his job, nonetheless on balance he Czerwinski, Lyle, Delaware, and Brown were far more credible than Pruett. Pruett was not an impressive witness. He was garrulous, voluble, aggressively assertive, and seemed wont to add detail where none was called for. While he has not achieved any level of formal education, he nonetheless appeared to me as gifted with guile and cunning and was certainly prepared to use those skills in front of me.¹⁵ Whenever he was given a chance, he willingly embellished;¹⁶ and, although it does not appear in the record, while sitting in the courtroom engaged in great animation during the testimony of others. When there was testimony favorable to his cause, he grinned victoriously shaking his head up and down; when the testimony was contrary to his interest, his face became clouded and angry and he shook his head in fierce denial. He testified it was hard work required by the saw which exhausted him. Nonetheless, the record shows that he is 46 years old, 6 feet 3 inches, and weighs 330 pounds. He is a very strong man. His predecessor, Walter Czerwinski, although a physical fitness enthusiast and also strong, is 63 years old, 5 feet 10 inches and weighs but 220. He has held that job for several years without difficulty. Thus it seems unlikely that the job is as hard as Pruett claims. Furthermore, Pruett's testimony that Czerwinski deliberately had him use dull saw blades is patently ridiculous.

And, too, I have no difficulty in crediting Brown's and Haase's testimony that they put Pruett on the lower saw job because he had asked for a higher paying one. As Brown pointed out, Pruett was a longtime employee and deserved such a chance. Indeed, he had been put on the flanking job earlier but declined it when he said it hurt his back. Both the flanking and the lower saw job paid more. Pruett, however, says he never asked for the lower saw job, but wanted to work on the hide puller with the air knife. Brown and Haase knew Pruett had also said he was afraid of heights and did not wish to work up in the air, a requirement of the hide puller job.

Accordingly, I do not credit Pruett in any significant way. Thus, I reject his testimony that while he was in the hide cellar someone told him to move to the high end of the chain in order to make it deliberately hard for him to hook the hides. Indeed, it appears to me that Delaware rather than giving Pruett onerous work, gave

¹⁵ Pruett clearly dissembled at one point. He said he "never once" worked in the hide cellar before May 1980. But employees Loftus and Nolan recall his having worked there previously, though not recently.

¹⁶ Examples of Pruett's embellishment are: (1) His claim that, on February 19, utility man Perales refused to spell Pruett on orders from Brown; (2) his claim that Haase told Czerwinski "to get lost" after showing Pruett only the minimum necessary to operate the chuck saw; (3) his claim that Branson asked when he would return to tail cutting because Branson "needed" him; (4) the claim that the fleshing machine "cleared itself" as implying that the fat cleanup job was unnecessary and therefore harassment; (5) his claim that Delaware said he had been told by an unnamed person to have Pruett hook on the high side of the hide chain; and (6) his two claims that, when he told supervision he was "doing just great" on his new jobs, they immediately made it worse for him. There are other examples as well.

him a fairly simple job. Furthermore, I reject the implication of his testimony that he was deliberately picked on to perform the fat cleanup job by the fleshing machine. No doubt such unappetizing jobs are required from time to time, but these occur not only in the hide cellar but elsewhere in the plant. Certainly it was reasonable for hide cellar supervision to ask him and another employee to do the cleanup work. I find no suggestion that this was done as a reprisal.

What occurred, it seems to me, is that Pruett perceived the transfers as a reprisal, refused to put up with them, and defied Delaware when he said he would not do the work anymore. Delaware did not care one way or the other since Pruett was only on loan to him. As a result he took Pruett to Brown and Brown tried to reason with him, but Pruett would have none of it and left.

Considering Pruett's general lack of credibility, I also reject his testimony that on May 6 Haase violated Section 8(a)(1) of the Act by threatening him with more arduous working conditions because of his union activities. The remark was that one of Pruett's "Union brothers was in the blood pit. It is just starting, baby, and you are next." Haase recalls that it was another employee who made the remark and denies that it was he. Here again, I find Pruett's credibility to be far less than that of Haase and recommend the allegation be dismissed.¹⁷

E. The Discharge of Dennis Stiles

Dennis Stiles' job was belly ripping or crotching. His duty station was the third or fourth job on the chain. Before the carcass gets to him, it is bled and legged, i.e., the hind legs are skinned and attached to the trolley chains. The animal is upsidedown, hanging from its hind legs. Stiles' job is to make a vertical slit from the animal's anus to the sternum. Several times a day it will occur that an animal, because of death throes, will be shackled by the wrong leg and turned around on the chain. Such an animal will come down the line backwards. It is Stiles' job, together with the second hang-off man, the duty station which precedes him, to turn the animal around by use of a turn-around track. This requires Stiles to leave his work station and move up the line 15 to 20 feet, joining forces with the hang-off man to wrestle the animal around. This occurrence is common and, despite Stiles' testimony that he was never actually told to perform this duty, he had been performing it since he was hired in 1978. Despite his claim that he had never actually been told to do it, it is clear that the individual at his work station was required to do it. I reach this conclusion because there was no one else who could help, and the turn-around track is between his station and the preceding one. It is likely that Stiles was told, but simply does not remember it.

Stiles testified that, on May 6, Assistant Foreman Haase told him to "pre-gut" the animals as well as rip the belly. This required Stiles to make a second cut inside the animal freeing the internal organs from the inner hide. Haase, however, denies ever issuing Stiles such an order.

Nonetheless, Stiles on that day began making a second cut. This doubled the amount of cutting time required for each carcass. When he was making only the single cut, he was able to leave his station for the few moments it took to turn the animal around, for he could run back to the last one and, by cutting quickly, catch up. However, if he made two cuts, as pregutting required, he no longer had time to turn backward carcasses. Accordingly, on May 10 he decided not to do so anymore.

On the previous day, May 9, he says Plant Manager Brown remarked to him as they passed each other in the office "Well, there's another man that's going to be down in rendering." Brown denies making the remark. The matter has been discussed, *supra*.

On May 10 Stiles told the second hang-off man that he would not help turn cows anymore because he was too busy with his pregut duty. This quickly resulted in the line being stopped, for backwards animals still had to be turned and Foreman Alabama Cox became angry with him for stopping the line, one transgression for which there was little tolerance. Stiles says he tried to holler to Cox that he could not do both jobs and still race over and turn the animals. Cox is certain no one ever told Stiles he had to perform a second cut and that Stiles never told him anyone had. Cox points out that there is another station down the chain which performs that job.

In any event, upon the third chain stoppage that morning Cox told Stiles to accompany him to the office to see Brown. Brown, however, was not there, having gone to the nearby city of Council Bluffs, Iowa. Cox told Schueman that Stiles would not flip cattle. Stiles said that he was doing two jobs already and could not help out. Stiles never told either man, however, that he had been told to pregut the animals. Thus, neither Cox nor Schueman was aware of what the second job was.

Cox left Stiles with Schueman. Those two had a conversation during which Stiles told Schueman he had bills to pay so he had thought it over and had decided to get back up there and do it; do whatever Cox wanted him to. He walked back out on the floor with Cox and repeated the same thing. Cox said, "Well, it's up to you." He then left momentarily and Stiles took Cox' remark as permission to resume his place in the line. He did so and relieved the utility man who had taken his place. He worked for about 15 minutes and Cox reappeared telling him to go to the office to see Brown who had returned. When he arrived at Brown's office he says Brown told him, "I got you on insubordination." Stiles explained that Cox had told him he could either go home or do as Cox wished and he had chosen the latter. Brown thought that over and said he could not go against Cox' word and that Stiles should go home. Stiles asked for reconsideration and Brown told him to return on Tuesday and they would discuss the matter. On the following Tuesday Stiles returned to see about his job. Cox told him they

¹⁷ The General Counsel and the Charging Party argue that I should presume Respondent had an unlawful motive in the Pruett discharge because of a perceived shift in the assigned reason for the discharge. At an unemployment hearing Respondent argued that Pruett was terminated for having left work. Here it says Pruett was terminated for having left work on this and other occasions. If this is a shift it is too insignificant to matter, particularly in view of my credibility resolutions.

had considered it again, and decided to let him go, particularly as on May 9 Stiles had been warned about throwing water on other employees. See section C, *supra*.

Cox testified that Stiles had always helped turn cattle in the past but his failure had caused the second hang-off man to stop the chain several times that day. On the first occurrence, he remembers Stiles told him he did not have time. Incredulous, Cox got mad, turned, and stomped away. On the third time it happened with Stiles continuing to say he did not have time, Cox decided to take Stiles down and took him to Brown's office, reporting to Schueman what the problem was. He told Schueman he was leaving Stiles there until Brown arrived. He says Stiles never mentioned having any additional duties to perform. Later he went back out on the kill floor and saw Stiles working again; aware that Brown was back in the plant, he had Stiles removed from the line. He told Brown by plant phone that Stiles would not turn the beef. In his version there is no suggestion that he was particularly upset with Stiles for having gone back to work.

Brown recalls the incident somewhat differently. He remembers that he was out of the plant when Stiles refused to turn the beef and he was called back because of the incident. He spoke to Cox who said that Stiles had refused to turn three carcasses. When Stiles was brought to Brown, Stiles told him that he "didn't have time" to turn the animals, but then said he would. Brown says he told Stiles he thought it might be too late, but he would talk to Cox and Stiles should come back in a couple of days to see if he could return to work. Brown denies saying anything to the effect that "I've got you this time on insubordination." He agreed that when Stiles returned the following Tuesday he mentioned the water throwing.

As noted above, Stiles, like others, had signed an authorization card, attended three or four union meetings, and wore a sticker prior to the election. However, there is no intimation that Stiles was a union leader or that Respondent thought he was; indeed his union activity, except for wearing the sticker, appears to have been unknown to Respondent.

Furthermore, although facially it appears as if Stiles' testimony is credible, there is an inherent problem with it. That is the question of whether or not Haase or anyone would ask him to perform a second cut on the production line where time was short and where there was a station further down the line which performed the duty he was asked to. It seems unlikely to me that Haase would have any reason to tell Stiles to make the pregut cut. Indeed, Cox points out that, if it were occurring, many of the entrails would end up on the floor before they were ready. Thus, I cannot credit Stiles' testimony that he was asked to perform a second cut. It makes no sense, even if designed as a harassment, because the probability of waste is too high. Even if it occurred, it does not appear that it was a duty given to him on a permanent basis. Therefore, if he were supposed to make such a cut on May 6, there is no reason to think that it was to continue through May 10.

On May 10 when he refused to turn the cattle, he never once told Cox, Schueman, or Brown that the

reason he could not turn the cattle was because he was making a second cut. Furthermore, he never invoked Haase's name during any of this and the other three were in the dark about it. In the circumstances, I conclude that Respondent discharged him because he caused the chain to stop three times that morning because of his refusal to turn the animals. It is true that there is his testimony, denied by Brown, that on May 6 Brown told him he was going to rendering, but even that, if credited, is vague. First, since Stiles is not credited with regard to the directive relating to pregutting, there is no reason to credit him with respect to Brown's alleged statement here. But, assuming that Brown did make the statement, it is unclear whether it was made to Stiles or someone else in the office that day since the plant is a rough and ready workplace. There is also the possibility that the remark was part of the daily razzing which occurs. Whatever it was, there is no reason for me to assume, blindly, that it was a threat to retaliate against Stiles for his union activity. Accordingly, I conclude that the General Counsel has not proven by credible evidence that the threat occurred as alleged or that its purpose was unlawful. Furthermore, it appears to me that the evidence preponderates in favor of Respondent's version, that Stiles was discharged because he refused to turn backward carcasses. Accordingly, the allegations involving Stiles should be dismissed.

F. The More Arduous Work Allegations

William Camerlinck and Clifford Little

As previously noted, on May 6, sticker Sonny Prue failed to appear for work. Prue testified that he had gotten drunk the night before, was still drunk and too hung over to work. His absence that day was unexcused. As it happened, he was the only experienced sticker Respondent then employed. The other blood pit employees were quite new. After the line started that morning, it became apparent to either Cox or Haase that the blood pit employees were unable to perform their jobs properly in Prue's absence. Accordingly, a decision was made to transfer Little, who had had a great deal of sticking experience in the past, to the blood pit. That required his removal from his rumping job and a replacement was needed for that. Bill Camerlinck, a hide puller, had had experience rumping and so he was moved to replace Little. Little performed the sticking job for most of the day, but in the afternoon severely cut his hand. He was unable to continue and had to go to the hospital for medical attention. Prue returned to work the following day, but because Little was unable to return to the rumping job, Camerlinck remained there until Little returned to work 6 weeks later.¹⁸ When Little returned to work, he was again placed at the rumping job and Camerlinck returned to the hide puller.

As with the others, both Little and Camerlinck's union activities were minimal. The only evidence of discriminatory motive is the previously discussed remark made by

¹⁸ Little combined some vacation period with his injury absence and was gone for longer than would have been expected under the circumstances.

someone to Pruett that morning that his "Union brothers were in the blood pit and it was just starting, baby." However, despite the remark, whether made by Haase or someone else, the truth is that neither Little nor Camerlinck was moved as a reprisal for their union activity. Their jobs were changed as a chain reaction to Prue's unexcused absence.¹⁹ The fact that Little cut himself was unforeseeable and certainly it was not Respondent's original intent to keep Camerlinck on the rumper job for 6 weeks, although that is what in fact occurred.

The General Counsel makes much of the fact that the sticker's job had changed between the time Little had done it before and this occasion. Yet it appears that the job was more difficult when he held it before, as it required him to skin the animal's head, not just cut the lip, as well as stick the carotid artery. And, it may be, as the General Counsel contends, that the animals now hang at a slightly different height than they formerly did, but that does not appear significant; certainly it was not Respondent's intention to deliberately risk injury to Little. Indeed, it appears that cuts are common in packing houses generally. As Prue pointed out, the sticking job is difficult because the animals may not be quite dead at the time they come to the blood pit; the risk of their jerking is higher there than at a later stage of the slaughtering process. Prue, too, has cut himself in the past.

In the circumstances, I do not find any discriminatory motive in these two transfers. Accordingly, I shall recommend that this allegation of the complaint be dismissed.

Jose Martinez

Jose Martinez had worked on the gut table, separating intestines for approximately 3-1/2 years. His union activity principally consisted of the fact that he served as the Union's observer at the election on April 11.

On May 6 he was assigned to train another man on the gut table and on May 9 was told to "rod the weasel," i.e., place a rod through the animal's esophagus to clear it. About 9:15 a.m. he was pulled off that job, he says for not doing very well, and was assigned to the offal department pulling tripe. According to him that job can be quite dirty.

However, the job was not a great deal different from his previous job, that of separating the edible from the inedible "paunches" or intestinal tracts. At his gut table job, he was required to send the inedible, condemned paunches to rendering through one chute and the edible paunches to the offal department via another chute. The condemned carcasses were clearly marked with U.S.D.A. blue ink.

His job in the offal department required him to open the paunches to clean them of the waste material inside. He says this was distasteful as occasionally the excrement would explode on him. Furthermore he says, the job was steamier than his previous work station. Later, he was assigned another job in the offal department, trimming tripe. When he was assigned to the offal de-

partment, he says his pay scale remained the same but since that time has increased for trimming tripe.

Foremen Cox testified he was the one who made the decision to move Martinez from the gut table to rodding the weasel and thence to the offal department. He says Willy Mitchell, a U.S.D.A. inspector, had told him Martinez was putting condemned paunches down the edible chute. As a result, he says he asked Martinez to rod the weasel for 2 or 3 days; Cox was satisfied with Martinez' work but Martinez was not, telling Cox he could not do that job very well. As a result Cox sent him to the offal department. He says this involved a wage increase from \$6.57 an hour to \$6.75.

Aside from any credibility question with respect to Martinez, I fail to see a *prima facie* case with respect to the unlawful nature of his transfer. It is true that it occurred some 3 weeks after Martinez served as an election observer, but no one ever told him he was being transferred because of his union activities and there is no evidence, direct or indirect, suggesting that was the purpose. Cox' statement that he moved Martinez because of a U.S.D.A. inspector's complaint is undenied. Furthermore, Martinez, with respect to his duties in the offal department, admitted to some carelessness with respect to contamination. It is likely therefore that he may have operated in the same fashion while on the gut table. In any event, he suffered no wage loss, probably got an increase immediately, and certainly an increase when he went to tripe trimming. He has had no serious difficulty in the offal department and apparently is a reasonably valued employee there. In the circumstances, I cannot find that his transfer was motivated by antiunion considerations. This allegation, too, should be dismissed.

Based on the foregoing findings of fact and the record as a whole, I hereby make the following:

CONCLUSIONS OF LAW

1. The Respondent, Union Packing Co., is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers, AFL-CIO, Local 216A, is a labor organization within the meaning of Section 2(5) of the Act.

3. On or about the dates shown in this Decision, Respondent violated Section 8(a)(1) of the Act by threatening to more strictly enforce work rules in the event the employees chose union representation and by interrogating employees regarding their union activities.

4. Respondent has engaged in no other unfair labor practices except as otherwise found above.

THE REMEDY

Having found that Respondent has engaged in certain violations of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and proposed remedy, and pursuant to

¹⁹ Employees Gish, Salanitro, and Barber all testified that temporary transfers of this nature are common due to attendance and other manpower changes. The only unusual aspect of this transfer is the length of time Camerlinck had to rumper.

Section 10(c) of the Act, I hereby issue the following recommended:

ORDER²⁰

The Respondent, Union Packing Co., Omaha, Nebraska, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with more strict enforcement of work rules, up to and including discharge, in the event they choose to be represented by United Food and Commercial Workers, AFL-CIO, Local 216A, or any other union.

(b) Interrogating employees regarding their union activities.

(c) In any like or related manner restraining or coercing employees in the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its Omaha, Nebraska, plant copies of the attached notice marked "Appendix."²¹ Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

²⁰ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

²¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The National Labor Relations Act, as amended, gives all employees the following rights:

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT threaten employees with more strict enforcement of work rules, up to and including discharge, in the event they choose to be represented by United Food and Commercial Workers, AFL-CIO, Local 216A, or any other union.

WE WILL NOT interrogate our employees regarding their activities on behalf of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the above-enumerated rights.

UNION PACKING CO.